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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,734	07/31/2000	Thomas Elliot Rabe	7730R	4129

27752 7590 10/08/2003

THE PROCTER & GAMBLE COMPANY
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EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 10/08/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 23

Application Number: 09/629,734
Filing Date: July 31, 2000
Appellant(s): RABE ET AL.

MAILED
OCT 08 2003
GROUP 2900

K.T. Pierre
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/16/03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is deficient because that the claimed compositions may be electrostatically sprayed is not surprising.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Art Unit: 1617

Applicants state that the claims stand or fall together.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,494,674	BARNETT	2-1996
WO 98/26752	MASUDA	6-1998

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 10-21 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 16.

(11) *Response to Argument*

Applicants continue to argue that Barnett et al teach away from stabilizers whereas Masuda teaches such. IN response, it is again noted that stabilizers are optional in Masuda, therefore, one of ordinary skill would recognize that such ingredients should not be included if, in fact Barnett et al teach away from stabilizers. It is further noted that Barnett et al does not prohibit stabilizers but rather merely comments on the potential undesirability of significant amounts of stabilizers. That is, stabilizers are not necessarily undesirable and, further, they may be so only if present in significant amounts. Applicants opine with out a cite to any authority that it is impermissible to combine a reference which optionally teaches an ingredient with a

Art Unit: 1617

reference that teaches away from that ingredient. Applicants also again argue that *BARNETT*
ET AL DOES NOT TEACH
emulsions. However, as previously noted, Barnett et al teach actives miscible with a
solvent and such solvents. The mixture will be an emulsion.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Webman/LR
September 9, 2003

Conferees


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12/8/03